

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Government Efficiency Appropriations Committee

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BILL: CS/SB 962

INTRODUCER: Government Efficiency Appropriations Committee and Senators Fasano and King

SUBJECT: Research and Development and Space Business

DATE: April 4, 2006

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Barrett	Cooper	CM	<b>Favorable</b>
2.	Keating	Johansen	GE	<b>Fav/CS</b>
3.			TA	
4.			WM	
5.				
6.				

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## I. Summary:

This bill exempts machinery and equipment used predominately for research and development activities from the state sales tax. The bill also increases the sales and use tax exemption for industrial machinery and equipment used for the production of space or defense technology products from 25 percent to 100 percent. Also, the bill expands this production exemption to include the design or assembly of space or defense technology products. The bill authorizes that the original certificate issued by Enterprise Florida, Inc. is valid for 2 years and provides for biennial renewal. In addition, the bill amends the definition of space technology products by adding space flight vehicles and components of any of the items covered by the definition.

This bill amends sections 212.052 and 212.08 of the Florida Statutes.

## II. Present Situation:

### Research and Development Taxation

Section 212.052, F.S., provides for certain sales and use tax exemptions for research or development activities. The term “research or development” is defined in section (1) as research which has as one of its ultimate goals:

- Basic research in a scientific field of endeavor;
- Advancing knowledge or technology in a scientific field or technical field of endeavor;
- The development of a new product, whether or not the new product is offered for sale;
- The improvement of an existing product, whether or not the new or improved product is offered for sale;

- The development of new uses of an existing product, whether or not a new use is offered as a rationale to purchase the product; and
- The design and development of prototypes, whether or not a resulting product is offered for sale.

Research or development does not include ordinary testing or inspection of materials or products used for quality control, market research, efficiency or consumer surveys, advertising and promotion, management studies, or research in connection with literary, historical, social science, psychological, or other similar non-technical activities.

Section 212.052(2), F.S., provides that any person who manufactures, produces, compounds, processes, or fabricates tangible personal property for their own use for research or development is exempt from sales and use tax imposed on the cost of the manufactured, produced, compounded, processed, or fabricated product. However, sales tax shall be due on the purchase, rental, or repair of real property or tangible personal property employed in research and development which is subject to tax at the time of purchase or rental. Subsection (3) provides that the sales and use tax exemption does not apply to any product of research or development used in the ordinary course of business, or that is offered for sale.

Section 212.052(4), F.S., provides for penalty of a person or affiliated group who makes a fraudulent claim under s. 212.052, F.S.

Section 212.031(1)(a)13., F.S., provides a sales tax exemption on the rental or license fee for property used or occupied predominantly for space flight business purposes. "Space flight business" is defined to mean the manufacturing, processing, or assembly of a space facility, space propulsion system, space vehicle, satellite, or station of any kind possessing the capacity for space flight, as defined by s. 212.02(23), or components thereof, and also means the following activities supporting space flight: vehicle launch activities, flight operations, ground control or ground support, and all administrative activities directly related thereto. Property shall be deemed to be used or occupied predominantly for space flight business purposes if more than 50 percent of the property or improvements to such property, is used for one or more space flight business purposes.

Section 212.08(5)(j), F.S., provides that machinery and equipment may be exempt from 25 percent of the sales and use tax if it is used predominately in defense or space research and development activities in a defense or space technology research and development facility to manufacture, process, compound or produce defense technology products or space technology products for sale or for use by these facilities. This paragraph also provides for an exemption from all sales and use tax for industrial machinery and equipment used in semiconductor technology facilities that is used predominantly in semiconductor wafer research and development activities.

To be eligible to receive these exemptions, a qualifying business shall apply to Enterprise Florida, Inc. (EFI) Once the application is determined to be complete, EFI evaluates the application and recommends approval or disapproval of the application to the Office of Tourism, Trade, and Economic Development (OTTED) within 10 working days. Upon receipt, OTTED has 5 working days to certify those applicants who are found to meet the requirements of s.

212.08(5)(j), F.S., and must notify the applicant, EFI, and the Department of Revenue of the certification. A business may apply once each year for the exemption.<sup>1</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 212.052(2), F.S., to delete a provision which imposes sales tax on the purchase, rental, or repair of real property or tangible personal property used for research or development.

**Section 2** amends s. 212.08(j), F.S., by eliminating research and design language for semiconductors, space, and defense. The bill changes the amount of the exemption for industrial machinery and equipment used for the production of space or defense technology products from 25 percent to 100 percent. The bill expands this production exemption to include the design or assembly of space or defense technology products. In addition, the bill amends the definition of space technology products by adding space flight vehicles and components of any of the items covered by the definition.

The bill provides that the original certification for exemption shall be valid for 2 years. In lieu of submitting a new application, the original certification may be renewed biennially by submitting to OTTED a statement, certified under oath, that there has been no material change in the conditions or circumstances entitling the business entity to the original certification.

The bill creates subsection (18), to provide a sales tax exemption for machinery and equipment used predominantly for research and development, and machinery and equipment used by a space flight business to design or create a space flight vehicle or component of a space flight vehicle.

This section specifies that “machinery and equipment” includes, but is not limited to, molds, dies, machine tooling, other appurtenances or accessories to machinery and equipment, testing and measuring equipment, test beds, computers, and software, whether purchased or self-fabricated, and if self-fabricated, includes materials and labor for design, fabrication, and assembly.

“Predominantly” means at least 50 percent of the time and consistent with s. 212.052(1)(a), F.S., “research and development” is defined to mean research that has one of the following goals:

- Basic research in a scientific field of endeavor;
- Advancement of knowledge or technology in a scientific or technical field of endeavor;
- Development of a new product;
- Improvement of an existing product;
- Development of new uses of an existing product; and
- Design and development of prototypes.

This section also specifies that “research and development” does not include ordinary testing or inspection of materials or products used for quality control, market research, efficiency or

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<sup>1</sup> Section 212.08(5)(j)6., F.S.

consumer surveys, advertising and promotion, management studies, or research in connection with literary, historical, social science, psychological, or other similar non-technical activities.

This section requires a person claiming the sales tax exemption to provide the vendor with an affidavit stating the machinery and equipment being purchased will be used for research and development, or by a space flight business. A person claiming the sales tax exemption through refund must include the affidavit with the application for refund to the Department of Revenue (DOR.) A person who fraudulently claims the sales tax exemption is subject to penalty pursuant to s. 212.085, F.S.<sup>2</sup> Purchasers must keep all necessary documents and make such documentation available for inspection pursuant to s. 212.13(2), F.S.<sup>3</sup> This section also provides that a person claiming the credit may submit a direct-pay permit instead of an affidavit. Those persons providing a direct-pay permit must also keep all necessary documents and make such documentation available for DOR inspection.

Finally, this section authorizes the DOR to adopt rules to implement the sales tax exemption.

**Section 3** provides an effective date of July 1, 2006.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

Subsection (b) of s. 18 Art. VII, State Constitution, provides that except upon approval of each house of the Legislature by 2/3 vote of the membership, the legislature may not enact, amend or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority exists on February 1, 1989.

By creating a sales tax exemption for machinery and equipment used predominately for research and development or by a space flight business, the bill reduces the municipalities' and counties' sales tax base, thereby reducing their revenue-raising authority. The total fiscal impact of the bill on counties and municipalities was estimated by the Revenue Estimating Conference to be \$5.6 million in fiscal year 2006-2007 and \$6.1 million in fiscal year 2007-08. Of this amount, \$2.6 million represents a reduction in revenue raising authority in the form of discretionary sales surtax revenues. Therefore, the measure appears to require a two-thirds vote of the membership of each house of the Legislature.

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<sup>2</sup> Section 212.085, F.S., provides that when any person fraudulently, for the purpose of evading tax, issues to a vendor or to any agent of the state a certificate or statement in writing in which he or she claims exemption from sales tax, such person, in addition to being liable for payment of the tax plus a mandatory penalty of 200 percent of the tax, shall be liable for fine and punishment as provided by law for a conviction of a felony of the third degree, as provided in ss. 775.082, 77.083, or 775.084, F.S.

<sup>3</sup> Section 212.13(2), F.S., provides that dealers must keep all pertinent records and papers that the DOR may require to administer ch. 212, F.S., and make the records and papers available for DOR inspection. Any dealer that violates these provisions is guilty of a misdemeanor of the first degree punishable as provided in ss. 775.082 or 775.083, F.S. If any subsequent offense involves intentional destruction of records, such subsequent offense is a felony of the third degree, punishable as provided in ss. 775.082 or 775.083, F.S.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

On March 31, 2006, the Revenue Estimating Conference estimated that this bill would result in a total loss of sales tax revenue of \$30.4 million in fiscal year 2006-07, and a recurring revenue loss of \$33.1 million. Of that total, \$1.5 million represents machinery and equipment used to produce defense and space products and \$28.9 million represents machinery and equipment used predominately for research and development. The recurring loss to the General Revenue Fund is \$26.9 million.

FY 2006-07  
(Millions)

General Revenue		State Trust		Local		Total	
Cash	Recurr.	Cash	Recurr.	Cash	Recurr.	Cash	Recurr.
(24.7)	(26.9)	(0.1)	(0.1)	(5.6)	(6.1)	(30.4)	(33.1)

**B. Private Sector Impact:**

Businesses that purchase machinery and equipment used predominately for research and development or for the production of space or defense technology products will be exempt from sales tax on those purchases.

**C. Government Sector Impact:**

The Department of Revenue may incur administrative costs related to implementation of these sales tax exemptions.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.



## **VIII. Summary of Amendments:**

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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